

The first part of the paper is devoted to a general discussion of the problem of the existence of solutions of the system of equations (1) for arbitrary values of the parameters  $\alpha$  and  $\beta$ . It is shown that the system has solutions for all values of the parameters  $\alpha$  and  $\beta$  if the function  $f(x)$  is continuous and has a bounded derivative. The second part of the paper is devoted to a detailed analysis of the case when the function  $f(x)$  is a step function. It is shown that in this case the system has solutions for all values of the parameters  $\alpha$  and  $\beta$  if the step function is continuous at the points where the derivative of the function  $f(x)$  is discontinuous. The third part of the paper is devoted to a study of the properties of the solutions of the system of equations (1) for arbitrary values of the parameters  $\alpha$  and  $\beta$ . It is shown that the solutions of the system are unique and depend continuously on the parameters  $\alpha$  and  $\beta$ . The fourth part of the paper is devoted to a study of the properties of the solutions of the system of equations (1) for arbitrary values of the parameters  $\alpha$  and  $\beta$ . It is shown that the solutions of the system are unique and depend continuously on the parameters  $\alpha$  and  $\beta$ .

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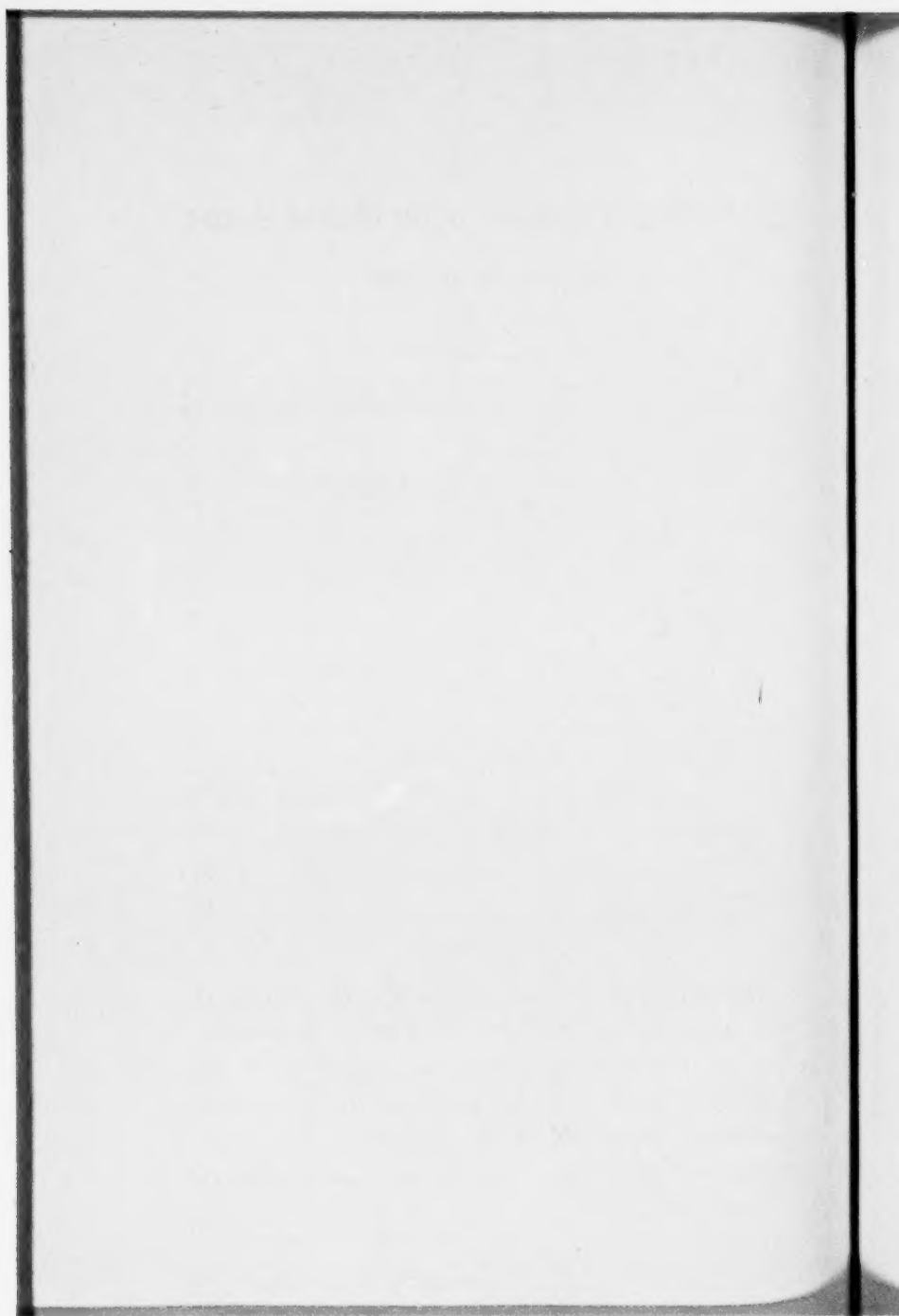
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(1)



# **In the Supreme Court of the United States**

OCTOBER TERM, 1945

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No. 1091

LOS ANGELES SOAP CO., A CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS FOR THE NINTH  
CIRCUIT*

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**BRIEF FOR THE UNITED STATES IN OPPOSITION**

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## **OPINIONS BELOW**

The opinion of the District Court (R. 40-46) is reported in 56 F. Supp. 260. The opinion of the Circuit Court of Appeals (R. 90-98) is reported in 153 F. 2d 320.

## **JURISDICTION**

The judgment of the Circuit Court of Appeals was entered on January 29, 1946. (R. 98-99.) The petition for rehearing was denied on March 1, 1946. (R. 99.) The petition for a writ of certiorari was filed April 9, 1946. The jurisdiction of this Court is invoked under Section

240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

#### QUESTION PRESENTED

Whether the United States is entitled to interest on processing taxes assessed against taxpayer from the date the taxes were due until the release to the Collector of an amount equal to the taxes which had been deposited by the taxpayer with the District Court and impounded in the registry of the District Court by the court's own order, pending a proceeding by the taxpayer to test the constitutionality of the tax.

#### STATUTE AND REGULATIONS INVOLVED

The applicable statute and regulations are set forth in the Appendix, *infra*, pp. 11-13.

#### STATEMENT

The facts as found by the District Court (R. 47-58) may be summarized as follows:

This is a suit to recover \$28,443.31 collected from taxpayer as interest due on delinquent excise taxes. (R. 9, 37.)

Taxpayer, a manufacturer of soap, was subject to the provisions of Section 602½ of the Revenue Act of 1934, imposing an excise tax on the first domestic processing of coconut oil produced in the Philippine Islands. (R. 49.) On February 11, 1936, the taxpayer brought suit in the District Court for the Southern District of California to

enjoin the Collector from collecting these taxes then due or thereafter payable from taxpayer on the ground that Section 602½ was unconstitutional. (R. 49.) On the same day the District Court issued a temporary injunction restraining the collection of the tax on condition that taxpayer file monthly tax returns with the Collector, that it give security for previously accrued but unpaid taxes, amounting to \$28,618.48, by depositing in the registry of the court a cashier's check for that amount, and that it deposit monthly thereafter the amount disclosed by its monthly returns. (R. 50.) Pursuant to this order, the taxpayer made three payments into the court registry and filed appropriate returns with the Collector. (R. 50-51.)

After hearing, the District Court on April 1, 1936, entered a decree denying an injunction and dismissing the cause. (R. 51.) *Los Angeles Soap Co. v. Rogan*, 14 F. Supp. 112. Taxpayer then filed a petition to enjoin the collection of the taxes pending appeal of the case. (R. 51.) Such an order was granted on April 14, 1936, with the proviso that pending the appeal taxpayer should continue to file monthly returns and should deposit in the registry of the court on or before the last day of each month the amount of tax disclosed by the monthly returns. (R. 51.)

On May 3, 1937, while taxpayer's appeal was pending this Court upheld the constitutionality

of Section 6021½ (*Cincinnati Soap Co. v. United States*, 301 U. S. 308), and on May 25, 1937, taxpayer's appeal was dismissed (R. 53.) During the 16-month period between commencement of the suit and dismissal of the appeal, taxpayer filed monthly returns with the Collector and made deposits in the registry of the court as required by the orders of February 11, 1936, and April 14, 1936. (R. 50-51, 52-53.) These deposits aggregated \$648,874.54 and this sum was delivered to the Collector on June 8, 1937, pursuant to the order of the District Court. (R. 52-56.)

The deposits paid to the Collector represented the principal amount of taxes due, but did not include any interest; interest on the various deposits computed in accordance with Section 6021½ amounted to \$28,443.31. (R. 95.) Upon demand of the Collector the taxpayer paid this sum as interest on July 7, 1937. (R. 57.) The taxpayer's subsequent claim for refund of such interest was rejected and this proceeding was brought. (R. 57-58.) The judgment of the District Court in favor of the taxpayer (R. 61-62) was reversed by the Circuit Court of Appeals on the ground that the deposits into the registry of the District Court were not payment of the taxes due to the Collector as required by Section 6021½, and hence that the collection of interest on such unpaid taxes was proper. (R. 97-98.)

## ARGUMENT

This case does not warrant review by this Court; the decision below involves no conflict; it correctly interprets the interest provisions of Section 6021½ of the Revenue Act of 1934 (Appendix, *infra*), and it is in accord with controlling principles recently announced by this Court. *Rosenman v. United States*, 323 U. S. 658; *Security Mills Co. v. Commissioner*, 321 U. S. 281.

Section 6021½ is explicit in requiring the payment of taxes "to the collector of internal revenue" and the tax is made due and payable "to the collector" at the time fixed for filing returns. If the tax is not paid when due, the statute specifically requires that interest be added as part of the tax from the date the tax was due until actual payment is made. In this case the taxpayer did not make payments to the Collector as required by the statute, but deposited each month an amount equal to the taxes due in the registry of the District Court, pending the outcome of taxpayer's injunction suit to test the constitutionality of the levy. These deposits were not intended to discharge tax liability; the taxpayer was challenging the existence of such liability when the various deposits were made. The court in receiving the deposits was not acting as an agent of the United States to receive taxes but merely as a stakeholder to insure subsequent payment of the taxes if the constitutionality of the



tax were upheld. Accordingly, the court below was clearly correct in holding that under Section 6021½ interest was properly assessed from the time the taxes were due under the statute until actual delivery of the deposits to the Collector in payment of such taxes. Then, for the first time, the taxes actually were paid to the Collector as required by the statute.

The decisions of this Court require the distinction drawn by the court below between actual payment of taxes and the deposit of funds as security to guarantee future payment of taxes which may be found to be due. *Rosenman v. United States*, *supra*; *Security Mills Co. v. Commissioner*, *supra*. See also *Dixie Pine Co. v. Commissioner*, 320 U. S. 516; *Massachusetts Bonding & Ins. Co. v. United States*, 97 F. 2d 879 (C. C. A. 9th). In the *Rosenman* case the taxpayer deposited funds with the Collector in anticipation of an assessment of estate tax and these funds were kept in a suspense account pending final determination of the amount due. This Court held that the statute of limitations on the taxpayer's claim for refund did not run from the date of the deposit but from the date the funds were actually applied in payment of the assessed tax. The deposit of funds was considered to be in the nature of a surety bond for later payment that did not discharge any tax obligation. The refusal to recognize the deposit as a tax payment in the *Rosenman* case is particu-

larly significant because the facts of this case in support of the contrary view which is advanced by this taxpayer are much weaker. Unlike the present case the money in the *Rosenman* case was deposited with the Collector, not a third party. And the deposit in that case was made in attempted satisfaction of a recognized tax liability, only the amount being disputed, whereas here, the taxpayer recognized no tax liability whatever. Clearly under the *Rosenman* case this taxpayer cannot be considered as having discharged its tax obligation, thereby preventing accrual of interest, when it deposited funds with the registry of the District Court.

Similarly, the *Security Mills* case, *supra*, compels the conclusion that only when the deposits in the instant case were turned over to the Collector did payment of the tax obligation occur, thereby stopping further accrual of interest. In the *Security Mills* case the taxpayer had obtained a temporary injunction which restrained the collection of processing taxes on condition that *pendente lite* the taxpayer file information returns and pay the amount of the tax into a depository. In denying the taxpayer's right currently to accrue and deduct the tax liability in controversy, this Court emphasized that taxpayer denied liability for and failed to pay the tax during the taxable year and hence was not in a position in its tax accounting to treat the Government's claim

as an accrued liability. If there is any merit in the taxpayer's contention here that payment to the court registry was payment of the tax, the taxpayer should be entitled to a deduction in its returns for the taxable years involved. Yet such a deduction clearly is not allowable under the *Security Mills* case and the *Dixie Pine Co.* case, *supra*.

This case does not, as taxpayer argues (Br. 15-17) fall within the rule that when a debtor deposits the amount of his debt into court the running of interest thereon is suspended. The interpleader, bankruptcy, and condemnation cases cited by taxpayer have no application where, as here, all liability is denied and the suit is instituted and the deposits made for the manifest purpose of preventing the Collector from immediately collecting the tax. In the interpleader cases, the debtor is ready and willing to pay and waits only judicial identification of the persons entitled to receive and the amounts they are to receive. In those cases and the receivership and bankruptcy cases payment is prevented by circumstances beyond the debtor's own control. In the taxpayer here was free to pay the tax and to litigate the question of constitutionality in a refund suit. In the condemnation cases, the sum deposited with the court by the Government as the estimated fair value of the lands taken, represents an acknowledged obligation which the creditor is at liberty

to accept. Interest is paid on any excess between the award made and the amount deposited, the only sum in real dispute. Further, special statutory requirements governing condemnation render inappropriate a comparison with interest problems arising in connection with Section 602½ taxes.

The taxpayer's assertion that interest should not be assessed against it because it lost the use of the money while on deposit with the court (Br. 18) is a curious distortion of relative equities. Cf. *John Hancock Mut. Life Ins. Co. v. Hurley*, 151 F. 2d 751 (C. C. A. 1st). Not only did taxpayer's action interrupt the orderly collection of tax revenue but the Government, no less than the taxpayer, was deprived of the use of the funds until the deposits were turned over to the Collector. Further, the taxpayer, not the Government, chose to institute injunction proceedings instead of paying the tax and seeking refund. There is no inequity to hold that taxpayer is bound by the consequences of its own choice. And, contrary to taxpayer's contention (Br. 20), it is not being penalized for testing the constitutionality of Section 602½. The interest here is not a penalty to coerce payment of the tax, as provided by Section 602½ (f), but compensation for the delay in making the funds available to the United States, as provided by Section 602½ (b). *United States v. Childs*, 266 U. S.

304; *Priess v. United States*, 42 F. Supp. 89 (E. D. Wash.); *United States v. Royal Indemnity Co.*, 116 F. 2d 247 (C. C. A. 2d).

#### CONCLUSION

The decision below is correct and involves no conflict. In view of the unequivocal interest requirements of Section 602½ and the decisions of this Court in *Rosenman v. United States*, *supra*, and *Security Mills Co. v. Commissioner*, *supra*, the issue presented does not call for review by this Court. The petition should therefore be denied.

Respectfully submitted.

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MAY 1946.





## APPENDIX

Revenue Act of 1934, c. 277, 48 Stat. 680:

### SEC. 602 $\frac{1}{2}$ . PROCESSING TAX ON CERTAIN OILS.

(a) There is hereby imposed upon the first domestic processing of coconut oil, sesame oil, palm oil, palm kernel oil, or sunflower oil, or of any combination or mixture containing a substantial quantity of any one or more of such oils with respect to any of which oils there has been no previous first domestic processing, a tax of 3 cents per pound, to be paid by the processor. There is hereby imposed (in addition to the tax imposed by the preceding sentence) a tax of 2 cents per pound, to be paid by the processor, upon the first domestic processing of coconut oil or of any combination or mixture containing a substantial quantity of coconut oil with respect to which oil there has been no previous first domestic processing, except that the tax imposed by this sentence shall not apply when it is established, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, that such coconut oil (whether or not contained in such a combination or mixture), (A) is wholly the production of the Philippine Islands or any other possession of the United States, or (B) was produced wholly from materials the growth or production of the Philippine Islands or any other possession of the United States, or (C) was brought into the United States on or before the 30th day after the date of the



enactment of this Act or produced from materials brought into the United States on or before the 30th day after the date of enactment of this Act, or (D) was purchased under a bona fide contract entered into prior to April 26, 1934, or produced from materials purchased under a bona fide contract entered into prior to April 26, 1934. All taxes collected under this section with respect to coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this subsection. For the purposes of this section the term "first domestic processing" means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed, but does not include the use of palm oil in the manufacture of tin plate.

(b) Each processor required to pay the tax imposed by this section shall make monthly returns under oath in duplicate and pay the tax to the collector of internal revenue for the district in which is located his principal place of business, or if he has no principal place of business in the United States, then to the collector of internal revenue at Baltimore, Maryland. Such returns shall contain such information and be made at such times and in such manner as the Commissioner of Internal Revenue, with the approval of the Secre-

tary of the Treasury, may by regulations prescribe. The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 1 per centum per month from the time the tax became due until paid.

\* \* \* \* \*

Treasury Regulations 48 (1934 ed.):

ART. 12. *Interest*.—The due date of the tax for the purpose of computing interest is the day upon which the return is required to be filed and the tax paid. If the tax is not paid at the time the return is required to be filed, there shall be added as part of the tax, interest computed at the rate of 1 per cent a month from the time the return is required to be filed until the tax is paid. For provisions relating to penalties, see article 21.